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MAY 26 2005

Docket No.: 30007697-2 (1509-165)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Stephen GOLD et al.

U.S. Patent Application No. 09/826,811

Group Art Unit: 2172

Filed: April 6, 2001

Examiner: Baoquoc N. TO

For: QUOTA MANAGEMENT IN CLIENT SIDE DATA STORAGE BACK-UP

PETITION TO THE COMMISSIONER UNDER 37 C.F.R. 1.181

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicants petition to have the May 5, 2005 Office Action rescinded because it does not comply with MPEP §1208.02.

FACTS

On November 19, 2003, a Final Rejection was issued. On January 20, 2004, an amendment was filed. On February 9, 2004, an Advisory Action was issued refusing entry of the January 20 amendment. On February 19, 2004, a Petition to have the Amendment after Final Rejection entered was filed. On April 16, 2004, an Advisory Action entering the January 20 amendment was issued. Both Advisory Actions maintained the Final Rejection. On July 12, 2004, applicant filed a Brief on Appeal. On May 5, 2005, a new non-final Office Action was issued. The May 5, 2005 Office Action does not specifically state that it was approved by the Examiner Supervisory Primary Examiner, as MPEP 1208.02 implies is necessary and does not give applicant the option of filing a reply under 37 C.F.R. 1.111 or requesting reinstatement of the appeal as required by MPEP 1208.02.

CERTIFICATION OF FACSIMILE TRANSMISSION
I HEREBY CERTIFY THAT THIS PAPER IS BEING FACSIMILE
TRANSMITTED TO THE PATENT AND TRADEMARK OFFICE
ON THE DATE SHOWN BELOWTracy A. Luke
TYPE OR PRINT NAME OF PERSON SIGNING CERTIFICATIONTracy A. Luke 5/26/05
SIGNATURE DATE7031872-9306
FACSIMILE NUMBER

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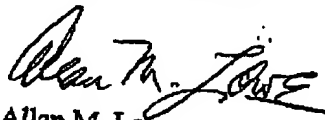
ARGUMENT

Based on the foregoing, rescission of the May 5, 2005 Office Action and issuance of a new paper is in order. Applicant also notes that 37 C.F.R. 41.39(2) implies that if the Examiner continues with the rejection set forth in the May 5, 2005 Office Action, the rejection should be incorporated in an Examiner's Answer and applicant should be given the option of responding by filing a reply under 37 C.F.R. 1.111 or requesting reinstatement of the appeal.

The Commissioner is hereby authorized to charge any necessary fees to Deposit Account 08-2025 and direct any inquiries in connection with this application directly to the undersigned.

Respectfully submitted,

Stephen GOLD et al.



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May 26, 2005
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